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Corporate tax as a utility for economic growth: challenges of compliance and enforcement in Nigeria

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I.C.C.L.R. 449 **Abstract**
The economies of oil-producing countries such as Nigeria have often been affected by changes in oil prices, which directly impact on the country's economy. Consequently, alternative sources of revenue need to be identified. This article provides an analysis of the enforcement legislation and policies within the existing Nigerian corporate tax regime. Findings indicate that the existing Nigerian corporation tax regime needs reform as there are developmental challenges that include, but are not limited to, a lack of adequate tax implementation and enforcement. Further, complex and ambiguous legislation mostly due to transplanting laws continue to thwart its success. This article concludes by recommending reforms to the Nigerian tax regime by using corporate tax as a revenue source for economic growth.

Introduction

Corporate tax legislation in Nigeria evolved through a series of ordinances and laws originating from the time of colonisation by Great Britain. At the earliest time of colonisation, direct taxation was imposed on the different regions of what later became Nigeria. However, with the expansion of the British Empire and the establishment of colonies, the colonial governments chose to either introduce taxation or modify an already existing system to serve their imperial interests. [1]

The current situation regarding corporation tax legislation in Nigeria suggests that poor enforcement of corporation tax rules and the ingenuity of taxpayers in evading tax obligations in Nigeria [2] are two key factors which influence tax compliance. Further, a study undertaken in Nigeria which investigated the reason behind tax evasion and avoidance suggested that the low level of compliance by corporate taxpayers could be attributed to the lack of accountability and the ***I.C.C.L.R. 450*** inadequacies of tax administration procedures and structures [3]; this study relates a lack of compliance to a perceived lack of trust in the Government and administration. Another study also found that low and shrinking tax compliance could be attributed to poor governance, corruption and the poor quality of the tax service. [4] It was found that corruption of the Government and tax officers has contributed to the high level of tax evasion in Nigeria. It follows that transparency on the part of the Government will lead to inducing compliance. [5] Lack of transparency creates uncertainty for taxpayers over whether the tax they have paid will be used to finance public goods and services, which then decreases their willingness to comply. Therefore, it is argued that where the taxpayers believe that the cost of bribing a tax official is lower than the tax due to be paid, the possibility of them offering the bribe is high. In addition, where there is no return for their tax in terms of basic services and public goods, there is a tendency towards mistrust and lack of confidence in the Government, which is the case in Nigeria. [6] Gwangdi indicates that Nigeria's tax laws are replete with punitive momentary measures as well as criminal sanctions but these laws are not strictly enforced. [7] The perceived inadequacy in rules and enforcement reduces the transparency of public action, which fosters distrust among citizens. As a result, taxpayers may not be willing to finance the state through taxes.

It is advanced in this article that the present tax regime is unsustainable, unequal, uncertain and inconvenient, owing to the inadequacies of existing legislation and policies in Nigeria. To counteract this problem, it is necessary for government to constantly reform and implement legislation and policies aimed at ending the problem of avoidance. Following on from this, this article aims at exploring the use of revenue from corporate tax as a means of achieving economic growth. Corporate tax is explored in this article with the consideration that corporations are fundamental to all aspects of life, both to the Government and to citizens in the sense that they largely provide them with a means of livelihood. [8] Corporate tax systems are designed to minimise economic distortions and can help promote an efficient economy. [9] In addition, corporations are intertwined in all aspects of life in both developed and developing countries, and proceeds from tax payments play an important role in the tax system [10] and contribute to the general functioning of that system by not only providing income to the Government but also helping buttress personal income tax. However, the success of corporation tax laws also rests on its administration and therefore much effort is to be given to this. ***I.C.C.L.R. 451***

This article first explores tax compliance and enforcement and, specifically, the situation in the corporate sphere in Nigeria. Secondly, it examines the legislation surrounding corporate tax compliance and enforcement in Nigeria in order to consider the negative and positive impacts on the levels of corporate tax revenue in Nigeria in a chosen time period. Finally, certain recommendations are made.

Tax enforcement and compliance

The importance of tax revenue and its impact on national economies has already been emphasised. The underlying features of a good tax system, for the purposes of providing for the sustainable well-being of a country, should be equality, certainty, convenience of payment and economy in collection, as reflected by Adam Smith. [11] With an understanding of the importance of tax revenue to economies, it is recognised that no system can function effectively without the co-operation of the majority of taxpayers, showing the extent to which compliance is important. [12] In order to fully understand the impact of a tax system on a national economy, it is important to understand the "why" and the "who" of tax compliance. [13] Lack of compliance by taxpayers leads to governments losing revenue and, to circumvent this, tax systems are designed with enforcement measures that are intended to enhance compliance. Thus, maximum revenue is ensured and, at the same time, the tax system becomes sustainable. [14]

Compliance with and enforcement of tax laws have been widely researched in developed countries and, currently, the most widely reported incidences of corporate and individual tax avoidance and evasion have highlighted the need to tighten loopholes that corporations and individuals use either to evade or to avoid tax payment. Both enforcement and compliance are intertwined and often overlap and this may be because traditional approaches to tax enforcement assume that taxpayers are generally non-compliant and therefore pay taxes only to avoid legal sanctions that may apply. [15] This recognises tax enforcement laws as laws that deal with penalties and the probability of detection if there is no compliance. [16] Unlike other law agents, tax agents do not start from a crime and work forward; rather, they tend to start from the back, looking for evidence of crime. [17] Further to this, tax enforcement also raises challenging issues about organisations and institutions, and citizens will adhere to the extent to which the Government can make laws that deter such practices. [18] In this sense, the extent to which there is enforcement will invariably depend on the extent to which there is compliance. ***I.C.C.L.R. 452***

The decision to declare one's full income to the tax authorities does not automatically provoke an enforcement reaction from the tax authorities. [19] This would imply that tax compliance depends solely on the risk that non-compliance will be detected and on the severity of the penalty that is imposed if it is detected. Ultimately, taxpayers have the choice between fully declaring, not fully declaring or not declaring any of the income they have earned. If the taxpayer chooses either of the latter two, it is still at the discretion of the tax authorities whether to enforce penalties. This is usually the case with Her Majesty's Revenue and Customs (HMRC) service as it has been reported to purposely select the companies on whom to enforce and impose penalties. [20]

This system of selection is not necessarily random because of the high administrative costs involved in enforcement and because HMRC would rather pursue defaulters from whom they are certain to get money back.[21] Thus, tax compliance has been cast in terms of the degree to which taxpayers comply with tax laws[22]; and this could be measured by the tax gap between revenue collected and revenue lost. James and Nobes view compliance with tax law and administration as the degree to which this is implemented without the need for enforcement.[23] This is debatable, however, as not all individuals or corporations tend to adhere to the law or choose to comply with opaque government laws. Further, some individuals may simply choose not to comply because they dislike or disagree with the Government in power while, in the case of businesses, some may feel cheated owing to more favourable conditions given to other businesses.

The Organisation for Economic Co-operation and Development (OECD) suggests that legislation plays a major role in achieving optimal compliance.[24] It advises that it is necessary to have clear-cut laws that are easy to understand and interpret, providing a solid backdrop on which tax administration can be built.[25] Good laws increase trust and underpin the tax authorities' ability to deliver procedural fairness in the conduct of its administration. A lack of trust by the citizens increases the risk of tax non-compliance.[26] For example, in the 1990s, many people in the UK refused to comply with the poll tax because it was deemed unfair as it did not treat people of similar income equally.[27] Consequently, if this view is to be accepted, it means that there must be a driving force behind the taxpayers' need to comply with these laws. This driving force may be transparency and fairness. In any event, the need for enforcement is still certain. Pope and McKercher propose that compliance occurs when the taxpayer fulfils all their legal obligations, including ***I.C.C.L.R. 453** filing the required returns on time and reporting the relevant tax liability accurately and in accordance with the prevailing conditions.[28]

Corporation tax—compliance and enforcement issues

The challenge with compliance and enforcement of corporate tax in Nigeria lies in the legislation and policies that surround this tax. As noted by Ogunsakin, one of the paramount issues with tax enforcement and administration generally in Nigeria stems from ambiguous and unclear legislation and policies transplanted from developed countries. Among the challenges of the enforcement of corporate tax, Ogunsakin lists issues such as the difficulty in tracking tax defaulters, the lack of power to arrest tax offenders by the tax officers and a lack of effectiveness of the sanctions and penalties. Despite agreeing with Ogunsakin, this article seeks to analyse the issues surrounding the legislation. The contention is that different legislation tends to overlap and seems to address similar issues in different ways—for instance, on the issue of the definition of a "corporation" and "foreign corporations" operating in Nigeria. This ambiguity causes problems in terms of setting out the right amount of tax to be paid. This has enabled foreign multinational corporation (MNC) to duly divert profits from Nigeria. The Companies and Allied Matters Act 2016 (CAMA) s.54(1) defines a "foreign company" as follows:

"Subject to Sections 56–59 of this Act, every foreign company which, before or after the commencement of this Act, was incorporated outside Nigeria, and having the intention of carrying on business in Nigeria shall take all steps necessary to obtain incorporation as a separate entity in Nigeria for that purpose, but until so incorporated the foreign company shall not carry on business in Nigeria or exercise any of the powers of a registered company and shall not have a place of business or an address for service of documents or processes in Nigeria for any purpose other than the receipt of notices and other documents as matters preliminary to incorporation under this Act."

This can be interpreted to mean that the CAMA does not recognise the existence of such corporations for business and tax purposes; rather, it only recognises them for the purpose of compliance with the incorporation laws in Nigeria. On the other hand, both the Companies Income Tax Act 2007 (CITA) and the Petroleum Profits Tax Act 2004 (PPTA) define a "corporation" in a broader sense. The CITA defines a "corporation" as "any company or corporation (other than corporation sole) established by or under any law in force in Nigeria or elsewhere", while the PPTA defines a company as "a body corporate incorporated under any law in force in Nigeria". Though they recognise both foreign and indigenous corporations for tax purposes, the definitions in both Acts come across as recognising all types of companies or corporations for tax purposes. John further suggests that a thorough examination of the CITA reveals many variations of the word "company", including those about to commence business, a profit-making company, a company in liquidation, a reconstituted company and a holding company. Thus, these varied and competing definitions of the notion of "company" show an ambiguity which ***I.C.C.L.R. 454** may lead to a misunderstanding in the implementation of the law by the tax authorities. It is necessary to have a precise definition of what entity to tax in order to be clear whose tax liability needs to be enforced. Section 47 of the CITA provides that a company can be taxed in its name, or the name of any of its principal agents or representatives in Nigeria (in the case of foreign or multinational companies), and in the name of a receiver or liquidator. Technically, this is a breach of the common law doctrine of lifting the veil but perhaps this section of the statute serves a good purpose of enabling and achieving the remittance of tax revenue from corporations.

The enforcement of corporate tax is entrenched in legislation by empowering the officers of the Federal Inland Revenue Service (FIRS) to enforce tax compliance. The extent to which this has been achieved or has served its purpose is highly debatable. Unlike in the UK and perhaps other transitioning countries, Nigeria's enforcement measures have not yet evolved. Despite reforms made to the tax system, especially around compliance and enforcement, the FIRS has reported a sizeable loss of revenue due to lack of compliance and adequate enforcement. It follows that there exists a large scale of tax evasion and avoidance which is caused by either inadequate or ineffective enforcement, or a lack of interest by the taxpayers in complying. This creates the need for: first, understanding and encouraging compliance; additionally, a further reform of existing enforcement measures; and, ultimately, creating realistic and effective enforcement measures. The literature indicates that MNCs tend to make use of the loopholes in the existing laws to avoid tax payments. However, with events such as the fall in oil prices, the focus of the present Nigerian Government is shifting increasingly towards taxation as the veritable source of revenue. New measures are being introduced by the tax authorities to raise revenue, while unprecedented fines are being imposed on corporate entities in Nigeria. Presently, in Nigeria, there are no specific enforcement measures against non-compliant corporations, although one could say that there are two approaches, which can be judicial, where the corporation is taken to court for non-compliance of their tax liability, and institutional, where the FIRS uses legislation and policies aimed towards enforcing tax collection.

The first steps towards enforcement for non-compliance of corporations in Nigeria are penalties, which are set out in the CITA. Section 92 of the CITA sets out a penalty of NGN 20,000.00 for any corporation which fails to comply with any of the provisions of the Act or of any rule made thereunder for which no other penalty is specifically provided. The Act also empowers the FIRS to assess every corporation's chargeable tax after the expiration of the period allowed for self-assessment. The mechanism entails sending reminder letters to taxpayers within two months of expected due dates and the issue of letters of demand or a call for returns on or before the due date. As part of the reforms of the tax system, and in a bid to bring about tax compliance, self-assessment was introduced in 1991. At that time, it was optional and came with incentives to elicit compliance. However, in 2011, with further tax reforms, self-assessment became mandatory for all corporations. The extent to which this has achieved its aims is questionable. When corporations conduct business in an environment that is not wholly conducive in the bid to protect their profits, the company will assess itself in a manner that ***I.C.C.L.R. 455** will be profitable for it. This clearly leaves room for tax avoidance as it cannot be expected that corporations will always pay the right amount of tax due.

In addition to the above, the Act provides tax officials with the power of distrain on any corporation that fails to comply with its payments after it has been assessed and the appropriate notice has been sent to it. It further empowers the tax officials with the right to call law enforcement officers to assist in carrying out this distrain. In a recent development, Nigerian financial institutions have been mandated to comply with the requirements of the Foreign Account Tax Compliance Act 2010 (FATCA). It is envisaged that this Act will help in curbing tax evasion and avoidance in the country as it serves as a means of exchanging information and as a means of collecting information about taxpayers in Nigeria and the US. This information will be used to determine the extent of profits and illicit financial flows being transferred out of the country. At present, most of the financial institutions in Nigeria that are classified as foreign financial institutions (FFIs) for the purposes of the FATCA have been registered with the Inland Revenue Service (IRS) in the US. The difference between the FATCA in the UK and the one in Nigeria is that the UK one falls under the Inter-Government Agreement (IGA) 2012 into which the UK and the US have entered. IGAs help reduce legal barriers to compliance and thereby lower the cost of implementing the FATCA on the affected parties. Furthermore, the US willingly exchanges information with countries with which it has entered into IGAs.

Effects of lack of compliance and enforcement

Different schemes have been used by MNCs and individuals to avoid and evade tax payments in the bid to boost profits and capital. These schemes result in a loss of tax revenues, which undermines government legitimacy and prevents economic and social development, and invariably affects the poorest of society. Tax avoidance is supposed to be within the legal framework of the tax law. It consists in exploiting loopholes in the tax law in order to reduce one's tax liability. It is generally expected that, while engaging in tax avoidance, the taxpayer has little reason to worry about possible detection; however, this is quite to the contrary. It is often imperative that a detailed statement is made about transactions in order to ensure that the desired tax reduction is received. The different concepts and definitions have made it unclear as to what exactly amounts to tax avoidance and whether or not it is legal. To tackle avoidance successfully, there needs to be a distinction between evasion, avoidance, mitigation and planning. As Vella attests, adding terms and adjectives such as "aggressive" and "abusive" does not clarify the meaning of avoidance; rather, these words add to the complication of the definition. [29]

It is suggested that tax evasion and avoidance practices have international connections through globalisation and the mobility of capital through MNCs. MNCs, in the bid to maximise their profits in cross-border transactions, tend to search for low-tax regimes where they can locate either subsidiaries or head offices. Oil and gas related activities, which contribute to cross-border activities, play a role in tax avoidance and evasion. To better maximise profits and escape from ***I.C.C.L.R. 456** heavy tax burdens placed on them, such MNCs will work towards taking advantage of loopholes in the laws of the host country where they are situated. Consequently, MNCs are termed to be the greatest culprits of using tax avoidance schemes as they account for a large part of the world's gross domestic product (GDP), with intra-firm trade a growing proportion. Additionally, they have global operating models with integrated supply chains and functions centralised at regional or world levels. Developing and developed countries globally compete to attract funds to their economies, and thereby create and offer environments either through tax incentives or various other incentives that are not tax related for foreign direct investment (FDI). These environments in turn create opportunities for MNCs to devise corporate tax structures through which they take advantage of legal loopholes to maximise profits, thereby evading and avoiding tax.

In an age of austerity, maximising government income is essential. According to Action Aid, developing countries are being deprived of billions of dollars of tax revenue by wealthy corporations and investors using secretive tax havens. [30] There is no question that these wealthy corporations are MNCs involved in cross-border transactions and investment. Otusanya argues that MNCs in Nigeria are the key actors that engage in tax evasion and avoidance, and thereby facilitate antisocial tax practices. [31] He argues that, owing to the blurred lines in the terminology of tax avoidance and evasion, MNCs have been able to evade and avoid tax payments in Nigeria. This is acceptable as there is no definition of "tax avoidance" or "evasion" in the Nigerian legislation. This could mean that the tax-planning strategies used by some MNCs in Nigeria may appear to be lawful but, if challenged, will amount to tax avoidance and evasion carried out through transfer pricing. In Africa, tax avoidance and evasion, in addition to illicit financial flows, have led to the developing and emerging economies of the continent losing more than $50 billion every year. This is due to illicit financial outflows, as governments and MNCs engage in fraudulent schemes aimed at avoiding tax payments. This causes a significant drain on government resources across the continent. MNCs in Nigeria have been accused of tax avoidance. This in fact could be because of inadequate enforcement measures in the legislation, as exemplified below.

MTN Group

MTN is the largest telecommunications MNC in Africa, with about 227.5 million subscribers, and it operates in more than 20 countries across Africa and the Middle East. MTN has its largest operation in Nigeria, where it is the biggest telecommunication provider. In October 2015, *Premium Times Nigeria* and a group of journalists across Africa reported the results of their investigation into the MTN Group, MTN Nigeria, MTN Ghana and MTN Uganda. [32] The report alleged that the MNC had been evading corporation tax in these countries through transfer ***I.C.C.L.R. 457** pricing arrangements and aggressive corporate structuring. It was discovered in 2013 that MTN transferred NGN 11.398 billion from MTN Nigeria to MTN Dubai that was then "on-paid" to Mauritius, a shell company with zero staff and whose physical presence in the capital Port Louis was a post office letterbox. [33] MTN contends that the transfer made to MTN Dubai was made in agreement with MTN Dubai to pay 1.75% of revenues from Nigeria to the company for management and royalties for the use of the MTN trademark. The Nigerian Government requires that the National Office approve management fees paid by multinationals to other subsidiaries for technology acquisition and promotion (National Office for Technology Acquisition and Promotion—NOTAP). However, it was alleged that this transfer was made without the NOTAP's approval. Prior to 2010, the fees had been approved but, following a failure to reach an agreement on the amount of management fees to be transferred, MTN was instructed to discontinue the payments. Notwithstanding, MTN has continued to make payments to MTN Dubai.

In Ghana, it was alleged that MTN Ghana transferred GHC 758 million and this accounted for almost 10% of its revenue between 2008 and 2013. In response, MTN Group and its subsidiaries in Nigeria, Ghana and Uganda contend that the transfers were legitimate payments for technology transfer and management fees, which were all agreed upon with the appropriate authorities in the respective countries. Furthermore, the MNC states that, owing to the evolving nature of its business operations and compliance frameworks in its markets, it continually engages authorities to identify mutually agreeable ways to meet their obligations. [34]

At present, the FIRS has carried out no investigation and the NOTAP in Nigeria and the Civil Society Network against Corruption have petitioned the Economic and Financial Crimes Commission in Nigeria (EFCC) to begin an inquiry into this. However, in another unrelated development, MTN has just been imposed with a fine of $5.2 billion for having committed approximately 28 infractions, one of which is the non-deactivation of 5 million unregistered SIM cards, which attracted the bulk of the fine. The likelihood of the payment of this fine is uncertain. The amount of money they were fined seems unrealistic and has been identified as the largest fine paid. Furthermore, given that the fine was subsequently reduced, this undermines the initial sum as it suggests that a fine is flexible. This rather projects an unstable and harsh business environment to investors, who will not favour the country.

Considering the case study from Nigeria, it could be inferred that MNCs use their corporate structuring and aggressive tax planning to manipulate loopholes in the system to evade and avoid corporate income tax (CIT) payments. Despite inter-company or subsidiary transfers within MNCs not being wrong, there is a need to do so within the principles laid out in the "arm's-length" principle. Not doing so is simply engaging in base erosion and profit shifting (BEPS). Taking advantage of multiple structures to shift profits around, as MTN has been accused of, is abusive transfer pricing which invariably robs governments of much-needed funds. On the other hand, with the rampant and inbred corruption that seems to have permeated the system, the tax officers themselves aid these MNCs in perpetuating tax avoidance and evasion. There is an imminent need to tackle this ***I.C.C.L.R. 458** problem as this behaviour would deter the effectiveness of any compliance measure put in place by the Government.

Revenue from corporation tax

For many oil-producing countries at this time, the need to diversify has become increasingly important as trends such as the reliance on fossil fuel and fluctuations in oil prices continue to influence market performance. This has led the director of the United Nations (UN) Tax Committee, Noureddine Bensouda, to state:

"Developing countries must be able to raise the revenues required to finance the services demanded by their citizens and the infrastructure (physical and social) that will enable them to move out of poverty. Taxation will play the key role in this revenue mobilization."[35]

With the number of foreign investors operating in Nigeria, an effective tax regime should be a stable source of revenue. It is argued, however, that developing countries lose a considerable amount of revenue through capital flight and tax avoidance by MNCs.[36] This may be due in part to the proliferation of avoidance practices perpetuated by MNCs,[37] which in turn has led to a low rate of tax compliance in Nigeria, a factor which has contributed to the low corporate tax contribution. Additionally, Nigeria's revenue from corporate tax is currently one-third (7%) of the GDP currently generated by other developing and emerging economies in Africa such as Ghana, whose revenue from corporate tax is 21% of its GDP.[38] Consequently, the issue of tax compliance and enforcement of corporation tax has been at the forefront of academic and political debate; and is also the underlying reason for undertaking this conceptual study.

Empirical literature shows that tax revenue has a significant effect on economic growth in Nigeria[39] as it stimulates economic growth through infrastructure development. Nevertheless, it has been argued that tax revenue, especially that from corporate tax, does not have an independent effect on economic growth.[40] This may be because, unlike developed countries, many developing countries such as Nigeria are faced with challenges in monitoring the statistics of their revenue flows and related issues. As a result of this limitation, the economic effects of corporate tax cannot be easily determined. The corporate tax regime in Nigeria is besieged with issues, mostly owing to improper tax administration as well as the lack of a well-structured tax regime. Additional issues are varying tax concessions, ***I.C.C.L.R. 459** rebates and tax holidays allowed to newly established companies. Tax evasion and tax avoidance are also likely to be responsible for this low yield.[41]

The high corporate tax rate of 30% in Nigeria has both positive and negative economic effects for the Government. On the one hand, it increases revenue, which is used by the Government to finance its goals as set out in the budget; on the other hand, there are negative effects that discourage investment while encouraging the tax evasion and avoidance that comes with the need to protect profits.

It has been suggested that there has been an increase in corporate tax revenue collected in Nigeria, as depicted in Table 1 below; the cause of this has not been established. Furthermore, the extent and amount of revenue generated by MNCs in Nigeria has not been properly determined. The 2014 Nigerian budgetary figures show that revenue from corporation tax accounted for 12%, which is NGN 454.54 billion[42]; this sum represents a forecast of what the Government expected to accrue that year. The table shows that revenue from corporation tax in 2014 amounted to NGN 1180.4071 billion.

QUARTERS	COMPANY INCOME TAX (in billions/Naira)									
	2011		2012		2013		2014		2015	
	FIRS Quarterly Target	Actual Collection	FIRS Quarterly Target	Actual Collection	FIRS Quarterly Target	Actual Collection	FIRS Quarterly Target	Actual Collection	FIRS Quarterly Target	Actual Collection
1ST	189,75	113,597	171,1865	116,5074	241,83	154,2939	257,57	174,1639	241,895	160,9244
2ND	63,25	63,9175	201,885	289,0813	241,8293	400,6694	241,895	556,2703	80,6317	501,6561
3RD	171,1865	240,1715	201,885	254,4492	241,8293	240,7724	241,895	273,129	117,0314	65,2876
4TH	171,1865	151,3937	201,8856	156,4812	241,8293	167,8149	241,895	176,8439	351,0942	265,3192
TOTAL	595,373	569,0797	776,8421	816,5191	967,3179	963,5506	983,255	1180,4071	790,6523	993,1873

Table 1: Corporation tax revenue generation in Nigeria 2011–2015 [43]

Table 1 above shows corporation tax revenue generated in Nigeria in the last four years.[44] The information is derived from FIRS raw data and the general pattern observed is that, in certain quarters of the year, the targets have been met or exceeded. Three key points arise from this. First, it is questioned whether the increase in the figures is because of an FDI influx yet to be determined by the FIRS and, if these figures are not due to a rise in investment by MNCs, then they may be due to a fluctuation in the way that tax legislation is applied.

Secondly, there is a suggestion that there is a big difference between the target and actuality which needs to be investigated. It could also be argued that the difference might be due to a lack of compliance by the MNCs, a lack of adequate enforcement or corruption by the tax officers, who may have misappropriated some of the received funds. Arguably, if the difference is as a result of inadequate ***I.C.C.L.R. 460** compliance and enforcement, then there is a need for a reform of the system. If this is done, the problem of the corruption of tax officers will be addressed and an increase in the collection of corporate tax revenue will achieved. At present, with the state of the Nigerian economy, revenue generated from CIT will successfully achieve growth and development. Empirical studies in economics, accounting and finance in Nigeria have found that there is a positive relationship between CIT and GDP. An increase in CIT revenue results in an increase in GDP. Such studies also found that revenue from CIT has a positive effect on economic growth in Nigeria.[45]

Finally, this data suggests that, comparatively, corporation tax has the ability to generate more revenue, and make a greater contribution to the annual budget, than value added tax (VAT), which contributes 3% of the funding of the budget. With the present decrease in oil prices, there has been a negative knock-on effect on the Nigerian economy; the Government has increasingly relied on taxation revenue, especially business taxation, as its new "oil".

As a consequence of this, the Nigerian Government is considering creating a fertile environment for foreign investment.[46] Taxes on corporate businesses are targeted to generate a great amount of the revenue that the country needs. The FIRS proposed revenue target from taxation for the 2016 fiscal year is NGN 4,957 trillion, which is NGN 385 billion higher than the NGN 4,572 trillion in 2015. The non-oil revenue will account for 80% of the gross target, with VAT accounting for NGN 2 trillion, representing 40.35%, while corporate tax is expected to bring in NGN 1,877 trillion, which accounts for 37.87%.[47] One setback in understanding the precise input and impact of corporate tax revenue with regard to the Nigerian economy is the lack of statistical data with which to accurately monitor and measure the input.

Towards an effective enforcement regime

The situation in Nigeria does not just call for effective enforcement and deterrence measures; rather, it also calls for an end to the corruption of tax officials. It is imperative that the gap between taxpayers and tax officials is narrowed as this will boost compliance while enforcement is achieved. Fostering the creation of additional incentives in addition to salaries and proper training will mean that the need to participate in corrupt practices by tax officers will be diminished. Furthermore, effective disciplinary measures should be put in place for erring tax officials. Considering the high number of MNCs investing in Nigeria, it is ***I.C.C.L.R. 461*** recommended that Nigeria should have in place specific anti-avoidance rules and, furthermore, should consider the adoption of a general anti-avoidance rule (GAAR), which could be a good weapon to have in the Government's armoury for tackling tax avoidance. Presently, the closest approximation to a GAAR is found in s.22 of the CITA, which states,

"that where the tax authorities are satisfied that (i) any disposition is not in fact given effect, or (ii) any transaction that reduces or would reduce the amount of any tax payable is artificial or fictitious, they may disregard any such disposition or make adjustments as they consider appropriate so as to counteract the reduction of tax liability". [48]

Unreported information obtained by the researcher from tax officers in the FIRS shows that tax officers are reluctant to apply this provision to transactions, mostly because of the vague and ambiguous language of the legislation. This causes an uncertainty in the law and thereby hampers the effective implantation of legislation and policies. Specific and unambiguous enforcement measures for MNCs and smaller corporations are necessary as there are currently none designed for such categories of taxpayers in Nigeria. [49] It is therefore recommended that the Nigerian Government should design an anti-avoidance instrument akin to a GAAR, [50] which will reflect a statutory measure that will achieve its set purpose. It is further recommended that this instrument should state anti-avoidance measures in clear and unambiguous language while including accepted international anti-avoidance measures. Bowler suggests that, while a GAAR may assist with countering some transactions, it will not always provide the answer for all transactions. [51] It could be more effective to consider using a GAAR while at the same time tackling areas in tax law which are structured in such a way as to maximise rather than minimise opportunities for tax avoidance. [52] This could be achieved by having tax authorities and the Government collaborate to ascertain whether provisions in the legislation are driven by an underlying structural scheme. The courts have a role to play in the sense that the interpretation of what legislation sets out is done by the courts during litigation.

The ambiguity in the Nigerian tax legislation, especially in terms of the definition of "foreign companies", "fixed base" and "permanent establishment", can easily lead to tax evasion and avoidance by MNCs. [53] Their approach to interpretation should therefore clearly reflect the intention of the legislation. The primary legislation for company formation in Nigeria (the CAMA) should be reviewed, ***I.C.C.L.R. 462*** bearing in mind the end results of companies, which could be said to be economic growth and development. Specifically, the review should include a section that introduces tax matters by pointing to the CITA and the FIRS. This will enable businesses, whether foreign or indigenous, to look towards the FIRS to address their tax liabilities at the onset of business formation.

For a continuous and sustainable reliance on taxation as a means of government funding, there is a need to achieve a balance between the Government (tax officers) and the taxpayers, both individuals and MNCs, especially regarding tax compliance. Therefore, there is the need for a review of the current tax compliance strategy. This should start with a redefinition of "tax avoidance" and "evasion". The complexities of the definitions of "tax avoidance", "mitigation", "planning" and "evasion" have added to the ongoing problems on the side of the Government in taking certain multinationals to task. In addition, MNCs use these complexities to successfully circumvent complying with their tax responsibilities. A clearer definition of those terms that are not in the Nigerian legislation is necessary. The Nigerian legislation does not in any instance present a clear definition of either tax evasion or avoidance. [54] This helps MNCs and individual taxpayers to facilitate tax evasion and avoidance. In addition, the article advocates an imposition and implementation of sanctions to be set for lawyers, tax advisers and company directors in Nigeria whose advice and actions encourage and achieve successfully tax evasion and avoidance. This will demonstrate to the international community and the MNCs that the Nigerian Government is willing and ready to tackle tax avoidance and evasion.

Transplanting policies and legislation from developed countries has been cited as a foundational issue with the legislation. Nevertheless, it will be worthwhile for the FIRS to look towards developed countries' tax bodies such as HMRC, not to transplant their laws but rather to develop the Nigerian system in a stronger way. For instance, in addition to legislation, HMRC uses vigorous administration, a refusal to compromise on litigation and "propaganda" by naming and shaming serial avoiders in the bid to deter them from avoiding tax further. [55] Despite this stance, the HMRC exhibits a willingness to accept settlement on a basis that includes full-tax interest and either no penalty or only nominal penalties, on the promise that, after a certain date, the offer is withdrawn and full penalties are sought. [56] While tackling tax avoiders such as MNCs and wealthy individuals who are most likely to engage in tax avoidance, the HMRC seeks to reduce tax avoidance by developing an open and co-operative relationship with these taxpayers, using customer relationship managers. [57] These customer relationship managers are responsible for knowing the taxpayer's business and tax affairs thoroughly, understanding the avoidance risks they pose and co-ordinating HMRC's interventions. ***I.C.C.L.R. 463** [58]

Conclusion

As identified previously, tax revenue can potentially play a pivotal role in stabilising the economy of a developing country such as Nigeria. From the available data used above, it can be assumed that with proper legislation and policies in place there could be an increase in the corporate tax receipts. However, inconsistencies and irregularities in the legislation and its applicability as discussed earlier create a barrier to the actualisation of an increment in corporate tax receipts. Therefore, it is necessary and thus recommended that the current legislation which affects corporations in Nigeria is reviewed. To achieve and fulfil the use of the corporate tax as revenue source for economic growth, clear, unambiguous legislation and policies, together with a mobilised workforce, are necessary. The combination of both is aimed at helping to close the loopholes used by corporations, whether domestic or multinational, thus achieving a strong corporate tax system that promotes and fosters socio-economic growth while meeting the basic needs of its citizens. In addition, perhaps, it will promote a more favourable environment that would attract both foreign investment and local business. Further, the short-term objectives of the Government should include reforms and the eradication of corruption to project a better international image for business. It is imperative that such objectives are reviewed periodically to strengthen the foundation that has been laid.

Chisa Onyejekwe

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